The Commonwealth of Massachusetts

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

D.T.E. 04-114
D.T.E. 03-118

August 24, 2005

Petition of Cambridge Electric Light Company and Commonwealth Electric Company d/b/a NSTAR Electric requesting approval of their 2004 Transition Cost Reconciliation Filing, pursuant to G.L. c. 164, §1A(a) and 220 C.M.R. § 11.03 (4)(e).

HEARING OFFICER RULING ON MOTION FOR CONFIDENTIAL TREATMENT

I. INTRODUCTION

On December 7, 2004, pursuant to G.L. c. 164, § 1A(a) and 220 C.M.R. § 11.03(4)(e), Cambridge Electric Light Company ("Cambridge") and Commonwealth Electric Company ("Commonwealth") d/b/a NSTAR Electric (collectively, "the Companies") filed with the Department of Telecommunications and Energy ("Department") their 2004 reconciliation filing, which consists of the reconciliation of transition, transmission, standard offer service and default service costs and revenues, and proposed updated charges and tariffs.[1] The Companies simultaneously filed a motion seeking confidential treatment ("Motion") of pages 6 through 8 of Exhibits CAM-CLV-1 and COM-CLV-1, asserting they contain proprietary, confidential and competitively sensitive

[1] On January 14, 2005, pursuant to a joint motion of the Companies and the Attorney General, the Department consolidated the Companies' 2004 reconciliation filing with their 2003 reconciliation filing, which is docketed as Cambridge Electric Light Company/ Commonwealth Electric Company, D.T.E. 03-118.

information (Motion at 1). The Companies provided redacted copies of these exhibits for the public docket. No party objected to the Companies' Motion.

II. STANDARD OF REVIEW

Information filed with the Department may be protected from public disclosure pursuant to G.L. c. 25, § 5D, which states in part that:

> The [D]epartment may protect from public disclosure, trade secrets, confidential, competitively sensitive or other proprietary information provided in the course of proceedings conducted pursuant to this chapter. There shall be a presumption that the information for which such protection is sought is public information and the burden shall be upon the proponent of such protection to prove the need for such protection. Where such a need has been found to exist, the [D]epartment shall protect only so much of the information as is necessary to meet such need.

G.L. c. 25, § 5D permits the Department, in certain narrowly defined circumstances, to grant exemptions from the general statutory mandate that all documents and data received by an agency of the Commonwealth are to be viewed as public records and, therefore, are to be made available for public review. See G.L. c. 66, § 10; G.L. c. 4, § 7, cl. twenty-sixth. Specifically, G.L. c. 25, § 5D, is an exemption recognized by G.L. c. 4, § 7, cl. twenty-sixth (a) ("specifically or by necessary implication exempted from disclosure by statute").

G.L. c. 25, § 5D establishes a three-part standard for determining whether, and to what extent, information filed by a party in the course of a Department proceeding may be protected from public disclosure. First, the information for which protection is sought must constitute "trade secrets, [or] confidential, competitively sensitive or other proprietary information;" second, the party seeking protection must overcome the G.L. c. 66, § 10, statutory presumption that all such information is public information by "proving" the need for its

non-disclosure; and third, even where a party proves such need, the Department may protect only so much of that information as is necessary to meet the established need and may limit the term or length of time such protection will be in effect. See G.L. c. 25, § 5D.

Previous Department applications of the standard set forth in G.L. c. 25, § 5D reflect the narrow scope of this exemption. See Standard of Review for Electric Contracts, D.P.U. 96-39, at 2, Letter Order (August 30, 1996) (protecting from disclosure electricity contract prices, but not other contract terms, such as the identity of the customer); Colonial Gas Company, D.P.U. 96-18, at 4 (1996) (all requests for exemption of terms and conditions of gas supply contracts from public disclosure denied, except for those terms pertaining to pricing).

All parties are reminded that requests for protective treatment have not and will not be granted automatically by the Department. A party's willingness to enter into a non-disclosure agreement with other parties does not resolve the question of whether the response, once it becomes a public record in one of our proceedings, should be granted protective treatment. In short, what parties may agree to share and the terms of that sharing are not dispositive of the Department's scope of action under G.L. c. 25, § 5D, or c. 66, § 10. See Boston Edison Company, D.T.E. 97-95, Interlocutory Order on (1) Motion for Order on Burden of Proof, (2) Proposed Nondisclosure Agreement, and (3) Requests for Protective Treatment (July 2, 1998).

III. MOTION FOR CONFIDENTIAL TREATMENT

The Companies seek confidential treatment of pages 6 through 8 of Exhibits CAM-CLV-1[2] and COM-CLV-1 because they contain the following projections: (1) the annual dollars to be paid under each of the Companies' existing purchase power agreements ("PPAs"); (2) projections relating to market prices of the electricity delivered under each of the existing PPAs; and (3) the projections of the annual above-market value of each of the existing PPAs (Motion at 3). The Companies contend that the projections are based upon (1) future market prices of power and (2) future costs of existing PPAs, which are based upon the market price forecasts (id. at 1, 3-4). The Companies also seek to protect attachments to their responses to DTE-1-1(c) and DTE-1-1(j), but they have not provided redacted copies for the public docket.[3]

In support of their Motion, the Companies state that the company that produced the market forecast data considers it to be proprietary and provided it to the Companies pursuant to a confidentiality agreement (Motion at 4).[4] In addition, they assert that public disclosure of this information could weaken their bargaining position in future divestitures of existing PPAs,

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[2] Cambridge submitted this same exhibit in Cambridge Electric Light Company, D.T.E. 05-45 (2005) and also requested it be accorded confidential treatment. Cambridge provided a redacted copy of the exhibit for the public docket.

[3] In D.T.E. 05-45, Cambridge also seeks to protect attachments to its responses to DTE-1-7(e) through DTE-1-1(h) and did not provide redacted copies for the public docket.

[4] The Companies did not identify the company in question or produce a copy of the confidentiality agreement.

thus compromising their ability to maximize mitigation for customers (id.). The Companies have made no representation as to the availability of these materials in the public domain and made no sunset recommendations.

IV. ANALYSIS AND FINDINGS

The Companies bear the burden of proving that the information for which protection is sought constitutes trade secrets, or confidential, competitively sensitive, or proprietary information. G.L. c. 25, § 5D. I find that the Companies have met this burden and therefore grant the Motion. The information on pages 6 through 8 of Exhibits CAM-CLV-1 and COM-CLV-1 and the attachments to the Companies' responses to DTE-1-1(c) and DTE-1-1(j) contain competitively sensitive and confidential information, which the Department has previously protected. Western Massachusetts Electric Company, D.T.E. 99-101, at 3-4 (2000); Boston Edison Company, D.T.E. 99-16, at 4 (1999). Moreover, the Department recently granted confidentiality for comparable provisions. See, e.g., NSTAR Electric, D.T.E. 04-70, Hearing Officer Ruling (March 14, 2005); NSTAR Electric, D.T.E. 04-78, Hearing Officer Ruling (March 14, 2005); NSTAR Electric, D.T.E. 04-61, Hearing Officer Ruling (March 14, 2005).

I will allow confidential treatment of these materials for a period of three years from January 21, 2005, which is consistent with the rulings in D.T.E. 04-70, D.T.E. 04-78 and D.T.E. 04-61. However, confidential treatment of these materials will automatically terminate upon completion of the Companies' PPA buyouts and renegotiations under the Restructuring Act pursuant to Boston Edison Company, D.T.E. 99-16, at 4 (1999), or at such time as the

Federal Energy Regulatory Commission ("FERC") releases the information for public dissemination, whichever event first occurs. The Companies are required to inform the Department if they become aware that FERC requires the information to be made publicly available. In the meantime, the Companies may seek to renew their request for confidential treatment upon proof of the need for such protection.

V. RULING

In sum, the Motion is granted. Specifically, the Department will protect from public disclosure until January 21, 2008: (1) pages 6 through 8 of Exhibits CAM-CLV-1 (including the same exhibit submitted in D.T.E. 05-45) and COM-CLV-1; (2) pages 6 through 8 of the attachments to the Companies' responses to DTE-1-1(c) and DTE-1-1(j); and (3) pages 6 through 8 of the attachments to Cambridge's responses to DTE-1-7(e) through DTE-1-1(h) submitted in D.T.E. 05-45. Within ten days of this Ruling, the Companies must file, consistent with this order, redacted copies of the attachments to the above-referenced information responses for the public docket.

VI. APPEAL

Under the provisions of 220 C.M.R. § 1.06(d)(3), any aggrieved party may appeal this Ruling to the Commission by filing a written appeal with supporting documentation within five (5) days of this Ruling. A written response to any appeal must be filed within two (2) days of the appeal.

_____/s/_____
Shaela McNulty Collins
Hearing Officer